

1988

Sandy City v. Randy Thorsness : Petition for Rehearing

Utah Court of Appeals

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UTAH COURT OF APPEALS
BRIEF

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DOCKET NO. 880637 IN THE COURT OF APPEALS

OF THE STATE OF UTAH

SANDY CITY,

:

Plaintiff/Respondent :

vs.

:

Docketing No. 880637-CA

Randy Thorsness,

:

Priority No. 2

Defendant/Appellant. :

PETITION FOR REHEARING

On Appeal from the Circuit Court, Salt Lake County,
Sandy Department, State of Utah, the Honorable
Robin W. Reese Presiding

Clifford W. Lark
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440 East 8680 South
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FILED

SEP 15 1989

COURT OF APPEALS

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TABLE OF CONTENTS

STATEMENT OF BASIS FOR PETITION	1
ARGUMENT.	1
CONCLUSION.	14
CERTIFICATION OF GOOD FAITH	15
APPENDIX.	16

STATEMENT OF BASIS FOR PETITION

In reversing the decision of the trial court, the Court of Appeals overlooked or misapprehended points of fact which were important to the analysis of reasonable suspicion and points of law in that it incorrectly applied the standard of review for assessing the facts before the trial court and in that it misapplied the reasonable suspicion standard.

The Plaintiff respectfully requests, therefore, under Rule 35 of the Rules of the Utah Court of Appeals, that the Court reconsider its decision reversing the trial and court, and in that this case has not previously been argued orally, the Plaintiff requests further that it be scheduled for oral argument.

ARGUMENT

I. THE COURT OF APPEAL INCORRECTLY APPLIED THE STANDARD FOR REVIEW OF THE FACTUAL DETERMINATION OF THE TRIAL COURT.

A. THE FACTS ARE CLEAR FROM THE TRIAL COURT RECORD.

The facts relevant to this petition consist of the testimony of Sandy police officer Pingree who cited the defendant for DUI. A copy of the eleven page transcript of Officer Pingree's testimony is included as Appendix "B" to Plaintiff's appeal brief. Such facts show as follows:

1. On Sunday, August 6, 1988, at approximately 1:30 a.m., defendant's car approached the intersection of 9400 South and State Street. Trans. 5. When first observed, the car was eastbound on 9400 South -- a four lane highway with two eastbound

lanes. Trans. 7-8.

2. Officer Pingree's police car was facing east in the outside eastbound lane of 9400 South. He was stopped just east of the intersection. The officer was standing next to a car parked directly in front of his own. The overhead lights on the police car were flashing. There was apparently no visible sign as to whether Officer Pingree had stopped to issue a citation or for some other purpose. In fact, the officer was helping a motorist start her car. Trans. 7.

3. The defendant pulled next to the officer's car in the center of the inside lane. There were no cars stopped ahead of the defendant and the officer did not direct the stop. He parked there for about 30 seconds. During that time, the officer, waived the defendant forward. The defendant eventually began to move eastbound at a "very slow speed." Trans. 7-9.

4. Officer Pingree followed the defendant without overhead lights for about five blocks. Trans. 10. Defendant's speed was approximately 20 mph in a 40 mph zone. Trans. 9, 12. There was no other traffic in the area to explain this speed. Trans. 8.

5. Officer Pingree turned on his overhead lights at about 550 East. The patrol car was 20-30 feet behind Defendant's car at the time. Defendant continued east for approximately 1 1/2 more blocks before even noticing the overhead lights. Trans. 11-12.

6. Defendant's vehicle eventually pulled to the right side of the road. Trans. 11. It then rolled forward at about one

mile per hour for about 30 feet before finally coming to a stop.
Trans. 12.

7. Officer Pingree is a veteran police officer. Trans 2-3. He has detected and arrested hundreds of DUI suspects. Trans. 5. Such detection was accomplished through extensive training in DUI investigations. Trans. 2-3. His training included how to detect persons under the influence of intoxicants from vehicle driving patterns and other suspect characteristics. Trans. 4-5.

8. Through such training and experience, Officer Pingree has come to understand the factors which suggest that a driver may be under the influence of intoxicants. Such factors include an unusual driving pattern such as unnecessarily slow driving or stopping. Trans. 4.

9. Officer Pingree developed the opinion that defendant's driving pattern was unusual and unnecessary under all the conditions. Trans. 9. His decision to stop defendant's car was based on that opinion, formed through Officer Pingree's extensive training and experience in DUI detection.

B. THE COURT OF APPEALS VIEWED THE EVIDENCE IN A MANNER HOSTILE TO THE TRIAL COURT'S DETERMINATION.

The Court of Appeals cited three basis for suspicion as follows:

The officer testified that he suspected defendant was intoxicated because at 1:30 a.m. he drove slowly in the inside lane, and because he stopped alongside the officer's car and failed to "immediately" move on when signaled to do so by the officer. Memorandum Decision, p. 2.

This summary of the evidence inaccurately minimizes the unusual driving pattern of defendant's vehicle. In fact, there were six bases for suspicion. Together they formed a continuous pattern of suspicious driving from when the defendant was first observed until stopped. Officer Pingree articulated these objective facts as follows:

1. Stopping without necessity in a four lane roadway, adjacent to an intersection, and in a manner to entirely impede all eastbound traffic.

2. Standing at that location for approximately thirty seconds.

3. Failing to respond to Officer Pingree's directive to move on.

4. Traveling very slowly in the inside lane for over five blocks.

5. Failing to even notice Officer Pingree's overhead lights, immediately behind him, for approximately 1 1/2 more blocks.

6. Rolling forward at the roadside at about one mph for about 30 feet before finally coming to a stop.

Officer Pingree did not claim that each of the six elements formed a separate basis for his suspicion. He was trained to evaluate the whole "driving pattern." Officer Pingree accurately and wisely concluded that such pattern was not consistent with the habits and conduct of a normal driver. Neither "curiosity" and courtesy pose a reasonable explanation of such a

comprehensive pattern of unusual driving behavior.

The Appeal Court's Memorandum Decision did not address all these facts. Such facts as were considered were segmented in a manner which understated the actual testimony. For instance, the Court minimized the length of time the defendant remained stopped after being waived forward. The Court stated that "when waved on by Officer Pingree, defendant hesitated momentarily, then pulled away . . ." p. 2. Officer Pingree testified the defendant "eventually" moved on, suggesting more than momentary hesitation. Trans. 8.

The Memorandum Decision also leaves the implication that the entire time the defendant stopped was momentary. It is undisputed that the defendant was stopped for thirty seconds. To a police officer waiting for someone to move on, "that's a real long time." Trans. 9.

The Court of Appeals must view the evidence "in a light most favorable to the trial court's ruling on the suppression motion." Memorandum Decision, p. 2. By segmenting and understating the elements of defendant's driving pattern, the Court of Appeals created a fictional characterization of events hostile to the trial court's determination and contrary to the standard for its review.

II. THE COURT OF APPEALS INCORRECTLY APPLIED THE REASONABLE SUSPICION STANDARD TO THE FACTS AND INFERENCES BEFORE IT.

To justify an investigative stop, an officer must "point to specific, articulable facts which, together with rational

inferences drawn from those facts, would lead a reasonable person to conclude that [the defendant] had committed or was about to commit a crime." State v. Trujillo, 739 P. 2d 85, 88 (Utah App. 1987). This test has three parts: 1) articulable facts, 2) rational inferences drawn from the facts, and 3) a conclusion, based the standard of a reasonable person, that a crime has or will be committed.

In addition to the three part test, courts have pointed to other factors which must be considered in determining reasonable suspicion for a stop. A court must take into account the training of the officer. State v. Sierra, 754 P.2d 972, 975 (Utah App. 1988). A court must look at the totality of the circumstances. State v. Baird, 94 Utah Adv. Rep. 40, 41 (Utah App. 1988). The level of suspicion required to justify an investigative stop is substantially less demanding than that required for probable cause. United States v. Sokolow, 57 U.S.L.W. 4401, 4403 (U.S. 1989).

In reversing the decision of the trial court, the Court of Appeal's decision misapprehended several key factors in its analysis of the investigative stop. In summary, the decision overlooks or minimizes facts appropriately articulated as a basis for the stop--facts which were both specific and objective. The decision readily draws inferences of innocent behavior from the facts but overlooks logical inferences of impairment. The decision views the facts in isolation without regard to the unlikelihood of the total sequence of events. The decision does

not appear to take into account Officer Pingree's extensive training and experience in DUI investigation. And the decision applies a level of suspicion which appears to be more akin to that required for probable cause than that traditionally required for investigative stops. This decision will significantly deter the efforts of law enforcers to protect the public from intoxicated drivers.

Slow driving and stopping without cause are classic signs of driving under the influence. This is standard training for law enforcers. The Drinking Driver, cited in Plaintiff's brief, is a guide for Utah law enforcers in detecting and apprehending people driving under the influence. It states clearly that slow driving and stopping without cause are among the driving patterns which indicate DUI.

These driving patterns are verified by national guidelines. The U.S. Department of Transportation has published a manual titled the Preliminary Breath Testing for Drinking-Driving Enforcement: Trainee's Manual. The manual lists 20 cues which police officers may use to detect nighttime drunk drivers.¹ The list was developed from "interviews with a variety of law enforcement specialists in DWI detection; from a detailed analysis of more than 1,000 DWI arrest reports from different geographical regions; and from a field study in which cues

¹ These cues are also cited in the Standardized Field Sobriety Testing Student Manual, Institute of Police Technology and Management, University of Florida.

observed in more than 600 patrol stops were correlated with driver BAC [blood alcohol content] levels." p. 2-5.

Two cues listed in the manual are Speed Slower Than 10 MPH Below Limit and Stopping Without Cause in Traffic Lanes. For each cue, the manual lists the chance in 100 that a driver displaying the pattern has a BAC of 0.10% or greater. There is a 50% chance that a person driving 10 MPH below the speed limit has a BAC of 0.10% or greater. The same percentage is attached to a vehicle which stops without cause. Regarding Stopping Without Cause, the manual states:

The critical element in this cue is that there is no observable justification for the vehicle to stop in the traffic lane; the stop is not caused by traffic conditions, traffic signals, an emergency situation, or related circumstances. Intoxicated drivers might stop in lane when their capability to interpret information and make decisions becomes severely impaired. As a consequence, stopping (without cause) in a traffic lane is likely to occur at intersections or other decision points.

Id. at 2-7.

The Court's decision suggests that there may have been a justification for the defendant's stop--that the defendant stopped out of curiosity or to render assistance. But an unimpaired driver would not have stopped for 30 seconds, particularly when the stop would have immediately obstructed traffic moving through the intersection. The unimpaired driver would also have moved forward immediately after the officer waved him on.

These facts, rather than indicating that the defendant

stopped out of curiosity or to render assistance, demonstrate the defendant's inability to interpret information and make decisions. It is important to note that another cue listed in the manual is Slow Response to Traffic Signals. Of course, this cue generally refers to traffic semaphores, but it can be applied equally the directions of a police officer. It should also be noted that there is no indication in the record that the car the officer was assisting would have appeared disabled to a passerby. The record does not say, for instance, that the hood was open. The average driver might more likely have thought that the officer had made a stop for a traffic violation.

Just as stopping without cause reflects lack of decision-making ability, slow driving reflects lack of control. The Court's opinion asserts that the lack of vehicle control associated with DUI can be detected only by reckless or erratic driving. Memorandum Decision, p. 3. But an intoxicated person drives slowly because of his inability to perceive and process information at normal speeds. He is no more able to control the vehicle than the person who drives erratically.

Significantly, the values attached to Slow Driving and Stopping Without Cause in the trainee's manual are based on the observation of only one cue, not on a combination of cues. p. 2-5. Officer Pingree observed both cues, and when two or more cues are observed, the probability of DUI increases 10%. Id. at 2-5.

These cues are useful general guidelines but do not account for subtleties in each individual case which may further indicate

impairment. The Court observed that there was "nothing inherently untoward in a driver traveling under the speed limit or in stopping momentarily." Memorandum Decision, p. 2-3. But it is difficult to imagine how the sequence of unusual events in this case would not give rise to a reasonable suspicion: 1) the stop in the middle of the highway, for no apparent reason, totally blocking eastbound traffic, 2) the extended length of the stop, 3) the failure to react to the officer's signal to move forward, 4) the slow speed over an extended distance, 5) the failure to respond to the officer's overhead lights, even though it was dark and the officer was only 20-30 feet behind, 6) the continued slow speed, 7) the unusually slow stop once the defendant pulled to the side of the road. The rational inference that is drawn from these facts, taken individual and collectively, is that the defendant was exhibiting the lack of perception and control associated with a driver impaired by an intoxicant.

A number of cases from other jurisdictions have upheld DUI stops under circumstances similar to those in this case.

State v. Ratliff, 728 P.2d 896 (Or. App. 1986) involved a defendant driving, early in the morning, 20-25 MPH in a 55 MPH zone. In the vicinity of the incident where a number of private residences, two businesses, and some fields. The officer had been traveling north and had seen no traffic on the road. He became suspicious when, after turning around to go south, he saw the defendant's headlights ahead of him. The vehicle could have

come only from one of the businesses or residences. The vehicle pulled into a private drive and then pulled out again and traveled past the officer's position at a slow speed. The officer followed him for about half a mile at 20-25 MPH and then stopped him.

The officer stated that his primary reason for the stop was suspicion of burglary. Suspicion of DUI was secondary. Significantly, the court based its theory for the stop wholly on suspicion of DUI. The officer testified that he had been trained in the apprehension of intoxicated drivers and the driving behavior he observed conformed with two patterns which he had been taught may indicate DUI: driving below 10 MPH under the speed limit and stopping to wait for a police officer to leave the area. He stated further that "driving underspeed was a characteristic that occurred in approximately half of the DUII arrests in a National Traffic Safety Institute Study." Id. at 898. The court concluded that these "two specific and articulable facts . . . provided a reasonable basis to suspect that defendant was driving while under the influence of intoxicants." Id. at 899.

In Shull v. Commissioner of Public Safety, 398 N.W.2d 11 (Minn. App. 1986) the Court of Appeals of Minnesota upheld a DUI stop under facts more arguably innocent than those in Ratliff. The officer observed a vehicle which was weaving back and forth over the center line and which in the officers estimation was traveling slower than necessary given the road conditions. It

was undisputed, however, that the road was snow-packed and icy. Furthermore, the defendant testified that the road was winding and slippery, had no visible centerline because of the snow, and that he was following tracks made in the snow in the middle of the road. Another witness verified that he had driven at a similar speed and followed the same tracks.

The court concluded:

The officer articulated specific facts--excessively slow speed and weaving over the center line--to support the stop. The reasonable inference the officer drew from these facts was that Shull may have been driving while under the influence. The fact that another inference might have been drawn, that Shull was driving properly for the conditions, does not negate the fact that Alexander, a trained officer, observed objective facts which made him suspect Shull of criminal driving.

Id. at 14.

Similarly, in Graves v. State, 305 S.E.2d 913 (Ga. App. 1983), the officer observed a vehicle traveling 30-35 MPH in a 55 MPH zone. Reciting the facts, the court said: "The car seemed to be operated in a slightly erratic manner, weaving slightly within the lane [emphasis added]." Id. at 915. The court held that the officer had adequate reason to stop the car and determine whether the driver was under the influence of intoxicants. Id. at 916.

In Clark v. State, 738 P.2d 772 (Alaska App. 1987), the officer observed a vehicle slide twelve to fifteen feet to a stop

on some loose gravel at an intersection. The vehicle then turned and proceeded at 25 MPH in a 45 MPH zone. This occurred an about 4:30 a.m. Based on this evidence, the court said that the trial judge "was not clearly erroneous is finding that there was sufficient information for [the officer] to form a reasonable suspicion that [the defendant] was DWI." Id. at 774.

Other courts have permitted stops for suspected DUI when the defendant's driving pattern included slow driving. State v. Fitzherbert, 361 A. 2d 916 (Me. 1976): The officer initially saw the vehicle traveling at least 20 MPH below the speed limit and saw a passenger throw what appeared to be a beer bottle out of the car. He followed the car for 20 minutes apparently noting no irregularities, except that the defendant kept glancing in this mirror. The vehicle made an abrupt turn without a signal and began to speed up. State v. Powell, 603 P. 2d 143 (Hawaii 1979): Vehicle traveled at unusually slow speed, stopped 10 to 15 feet from an intersection line, and waited 10 seconds to continue. He followed the same pattern at the next intersection after signalling about 200 feet before the stop. There was no other traffic in the area.

The foregoing cases support the trial court's finding that the officer had a reasonable suspicion for stopping the defendant. Each case recognizes slow driving, combined with other factors, as an indicia of DUI. Also important is that many of the facts supporting the stop could have been explained as innocent behavior. In its decision, the Court of Appeals left

the implication that reasonable suspicion is determined by a test of balancing innocent behavior against culpable behavior: "these facts are equally indicative of innocent behavior and, without more, do not provide a reasonable basis to suspect defendant of being intoxicated [emphasis added]." p. 3. This statement could be misconstrued to mean that reasonable suspicion is more along the lines of probable cause. This, of course, is not the case. But it can only be assumed, given the Court's decision and the strength of the evidence, that the Court applied this more demanding standard.

This case must be distinguished from cases such as Sierra, Baird, and Carpena in which there may have been an underlying suspicion of pretext or profiling based on mere hunches. Here the facts articulated by the officer were direct indicia of the charge for which the defendant was arrested. The officer viewed these facts and made his decision to effect a stop based on extensive training and experience. From the beginning to end the defendant pursued a course of conduct which was unlikely at best and clearly gave rise, in view of all the circumstances, to reasonable suspicion.

CONCLUSION

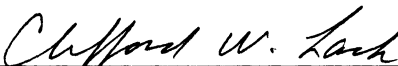
The Court of Appeals incorrectly applied the standard of review for the factual determinations of the trial court by not viewing the evidence in a manner most favorable to the trial court's decision. The Court overlooked or minimized facts which were clearly before the trial court and are essential to an

analysis of the basis for the investigative stop. Furthermore, the Court of Appeals incorrectly applied the reasonable suspicion standard to the facts and inferences before it. The Plaintiff respectfully requests, therefore, that the court rehear this case.

CERTIFICATION OF GOOD FAITH

I, Clifford W. Lark, attorney of record for the Plaintiff and Respondent, hereby certifies to this Court that this petition is filed and presented in good faith and not for any purpose of delay.

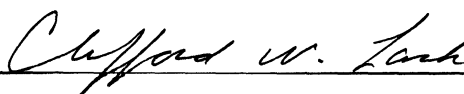
Respectfully submitted this 15th day of September, 1989



Clifford W. Lark

CERTIFICATE OF SERVICE

I hereby certify that on September 15th, 1989 I mailed four copies of the foregoing Petition for Rehearing, by Certified Mail, to D. Bruce Oliver, Diumentti and Lindsley, 505 South Main Street, Bountiful, Utah 84010.



APPENDIX

Excerpt, Preliminary Breath Testing for Drinking-Driving Enforcement: Trainee's Manual, U.S. Department of Transportation, National Highway Traffic Safety Administration (1982).



U.S. Department
of Transportation
**National Highway
Traffic Safety
Administration**

Preliminary Breath Testing for Drinking-Driving Enforcement

Trainee's Manual

Foreword

The National Highway Traffic Safety Administration (NHTSA) is responsible for developing training programs responsive to the Uniform National Standards established by the Highway Safety Act of 1966. These programs provide guidelines for training in State and local jurisdictions having highway safety and traffic law enforcement responsibilities. NHTSA, therefore, intends that the programs be of the highest quality and that they address the high-priority training needs of agencies that provide highway safety services. An especially important training need arises when new technology becomes available to augment highway safety services.

NHTSA sponsored the preparation of this training package in response to such a technological development. Preliminary breath testing (PBT) devices provide a means of improving a police officer's ability to evaluate suspected drinking-driving violators. A reasonably accurate, reliable and easy-to-operate PBT can give an on-the-spot indication of the suspect's blood alcohol concentration (BAC) that will be an important factor in the officer's decision to arrest or not to arrest. Proper use of PBTs is expected to lead to more effective enforcement of drinking-driving laws and, in turn, to reduction of alcohol-related crashes and fatalities.

In recent years NHTSA and several private manufacturers have substantially advanced PBT technology. Several types of these devices now exist, each employing technically sound operating principles and promising reasonably accurate and reliable indications of BAC at reasonable cost. Extensive field tests of several of these PBT models have demonstrated a significant increase in enforcement effectiveness. Increased use of these devices by law enforcement agencies is anticipated. NHTSA developed this training program to provide the instruction and motivation necessary for the most effective use of PBT devices.

This training course has been designated as the Preliminary Breath Testing for Drinking-Driving Enforcement. It is a one day course comprised of six units.

Introduction

This manual is your principal study guide and reference source for the basic course in Preliminary Breath Testing for Drinking-Driving Enforcement. It provides a detailed outline of each unit of the course. These outlines list the training objectives and content of each unit. The training objectives list what you are expected to be able to do at the end of each unit. The content outline contains the information you will need to achieve the training objectives. This information will be supplemented by the instructor's classroom discussions, sample problems and exercises and hands-on practice sessions. The unit outlines also include study topics, which consist of sample problems and suggestions for reviewing the material covered.

This manual is only a basic reference document, *not* a complete text for the course. Some of the essential information for this training comes from your State, your community and your law enforcement agency. This "local" information includes the statutes and regulations concerning drinking-driving violations, policies and procedures affecting enforcement and the specific role of preliminary breath testing devices in enforcement. Your instructor will present this information in lectures and handouts as well as in the additional reference sources sug-

gested.¹ By the end of the course, your lecture notes, handouts and reference citations, together with the content outlines of this manual, will provide you with a complete set of information about prearrest screening in your jurisdiction.

This manual will be useful to you at three different times. First, before the course, it will allow you to preview the contents, structure and sequence of units. This should make it easier to follow the presentations and discussions. Second, during the course the manual can serve as an excellent notebook. Its detailed outline should minimize the need for taking elaborate notes; instead, you will be able to concentrate on recording other key points of the instructor's lecture. Third, after the course is completed, the manual and your notes will be a reference/refresher source. If your instructor conducts a formal test, your completed manual will help you prepare for the test.

In addition, as you apply what you have learned in this course to your drinking-driving enforcement duties, you can use the manual to refresh your memory. Also, the manual can be easily updated to accommodate changes in statutes and policies. If new types of devices are adopted, information on them can be added to this manual. Making these changes will keep the manual current and useful.

¹Since the training package was prepared by NHTSA for nationwide use, this kind of material could not have been included in the basic manual.

Unit 2—Appendix

Following are 20 cues which police officers may use to detect nighttime drunk drivers. The cues were developed from interviews with a variety of law enforcement specialists in DWI detection, from a detailed analysis of more than 1,000 DWI arrest reports from different geographical regions, and from a field study in which cues observed in more than 600 patrol stops were correlated with driver BAC levels. These cues represent the most systematically developed method available for visually predicting whether a vehicle operated at night is being driven by a DWI driver or a sober driver.

An illustrated booklet listing the cues is available free of charge from:

National Highway Traffic Safety Administration,
Administrative Operations Division,
Room 4423, 400 7th Street, S.W.,
Washington, D.C. 20590.

Ask for, *Guide for Detecting Drunk Drivers at Night*
(DOT HS 805 711)

Probability Values

The number given after each visual cue is the probability that a driver exhibiting that cue has a BAC equal to or greater than 0.10%. For example, the 65 for the first cue, **Turning With Wide Radius**, means that chances are 65 out of 100 that a driver who turns with wide radius at night will have a BAC equal to or greater than 0.10%. The 50 for **Drifting** means that chances are 50 out of 100 (50:50) that a driver who is drifting at night will have a BAC equal to or greater than 0.10%.

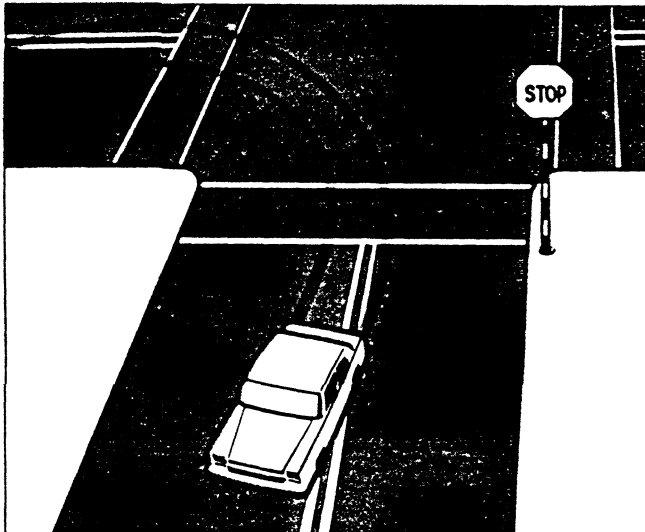
Each value shown is based on seeing only one cue. However, multiple cues are seen more often than single cues. When two or more cues are seen, add 10 to the largest value among the cues observed.

When you want to predict from an observed cue the probability that a driver has a BAC equal to or greater than 0.05%, add 15 to the value shown for that cue. For multiple cues, add 15 after adding 10 to the largest cue value.

Using the probability values to decide whether or not to stop a particular driver will be a matter of departmental policy and/or officer judgment. The Guide is only an aid that provides information concerning which visual cues are most likely to indicate a drunk driver at night.

**65%
Turning With
Wide Radius**

During a turn, the radius defined by the distance between the turning vehicle and the center of the turn is greater than normal.



**60%
Almost
Striking Object
or Vehicle**

The observed vehicle almost strikes a stationary object or another moving vehicle. Examples include: passing abnormally close to a sign, wall, building, or other object; passing abnormally close to another moving vehicle; and causing another vehicle to maneuver to avoid collision.

**60%
Weaving**

Weaving occurs when the vehicle alternately moves toward one side of the roadway and then the other, creating a zig-zag course. The pattern of lateral movement is relatively regular as one steering correction is closely followed by another.

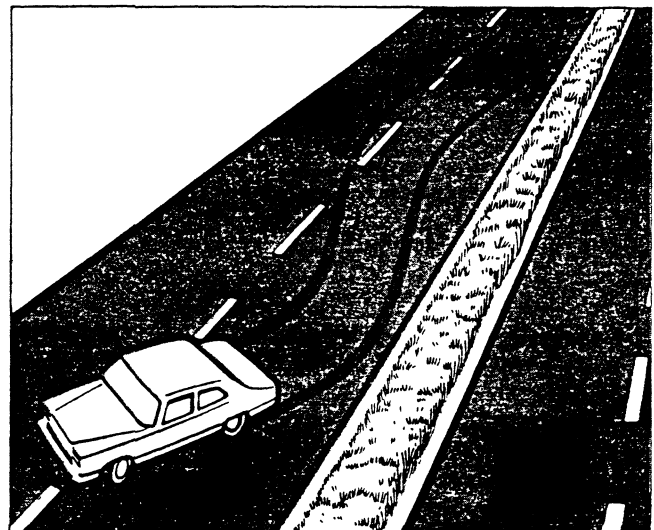
**65%
Straddling
Center or Lane
Marker**

The vehicle is moving straight ahead with the center or lane marker between the left-hand and right-hand wheels.

**60%
Appearing to
be Drunk**

This cue is actually one or more of a set of indicators related to the personal behavior or appearance of the driver. Examples of specific indicators might include:

- Eye fixation
- Tightly gripping the steering wheel
- Slouching in the seat
- Gesturing erratically or obscenely
- Face close to the windshield
- Drinking in the vehicle
- Driver's head protruding from vehicle

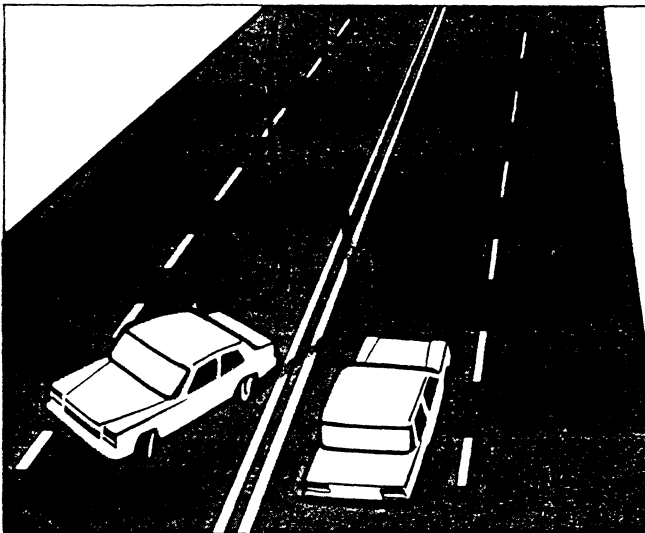


**55%
Driving on
Other Than
Designated
Roadway**

The vehicle is observed being driven on other than the roadway designated for traffic movement. Examples include driving: at the edge of the roadway, on the shoulder, off the roadway entirely, and straight through turn-only lanes or areas. The last example is illustrated below.

55%
Swerving

A swerve is an abrupt turn away from a generally straight course. Swerving might occur directly after a period of drifting when the driver discovers the approach of traffic in an oncoming lane or discovers that the vehicle is going off the road; swerving might also occur as an abrupt turn is executed to return the vehicle to the traffic lane. In the illustration below, a swerve was executed to return to a lane after a period of drifting toward opposing traffic.



50%
**Speed
Slower Than
10 M.P.H.
Below Limit**

The observed vehicle is being driven at a speed that is more than 10 MPH below the speed limit.

50%
**Stopping
Without Cause
in Traffic Lane**

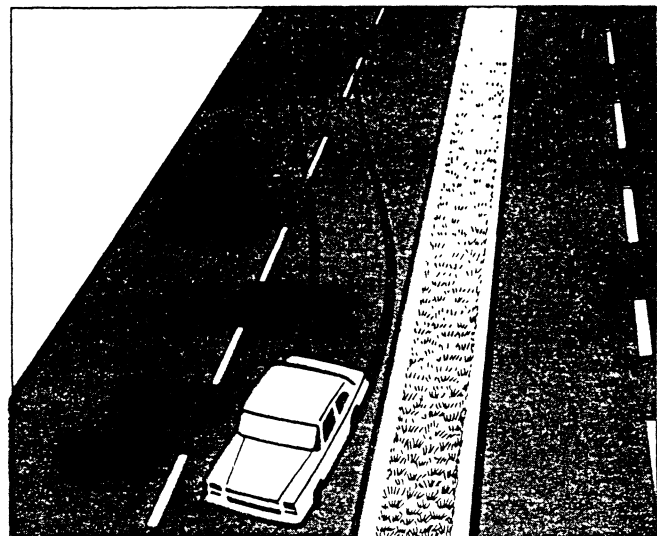
The critical element in this cue is that there is no observable justification for the vehicle to stop in the traffic lane; the stop is not caused by traffic conditions, traffic signals, an emergency situation, or related circumstances. Intoxicated drivers might stop in lane when their capability to interpret information and make decisions becomes severely impaired. As a consequence, stopping (without cause) in the traffic lane is likely to occur at intersections or other decision points.

50%
**Following
Too Closely**

The vehicle is observed following another vehicle while not maintaining the legal minimum separation.

50%
Drifting

Drifting is a straight-line movement of the vehicle at a slight angle to the roadway. As the driver approaches a marker or boundary (lane marker, center line, edge of the roadway), the direction of drift might change. As shown in the illustration, the vehicle drifts across the lane marker into another lane, then the driver makes a correction and the vehicle drifts back across the lane marker. Drifting might be observed within a single lane, across lanes, across the center line, onto the shoulder, and from lane to lane.



45%
**Tires on
Center or
Lane Marker**

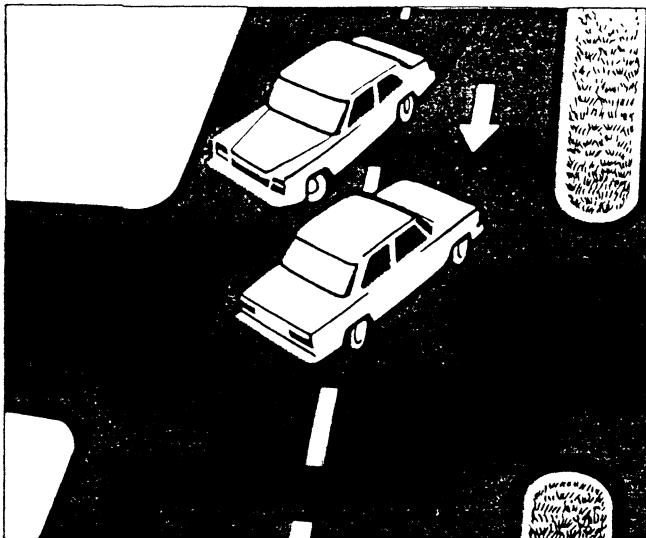
The left-hand set of tires of the observed vehicle is consistently on the center line, or either set of tires is consistently on the lane marker.

45%
**Braking
Erratically**

The driver of the observed vehicle breaks unnecessarily, maintains pressure on the brake pedal ("riding the brakes"), or brakes in an uneven or jerky manner.

Driving Into Opposing or Crossing Traffic

into opposing or crossing traffic under one or more of the following circumstances: driving in the opposing lane; backing into traffic; failing to yield the right-of-way; driving the wrong way on a one-way street. The last circumstance is illustrated below.

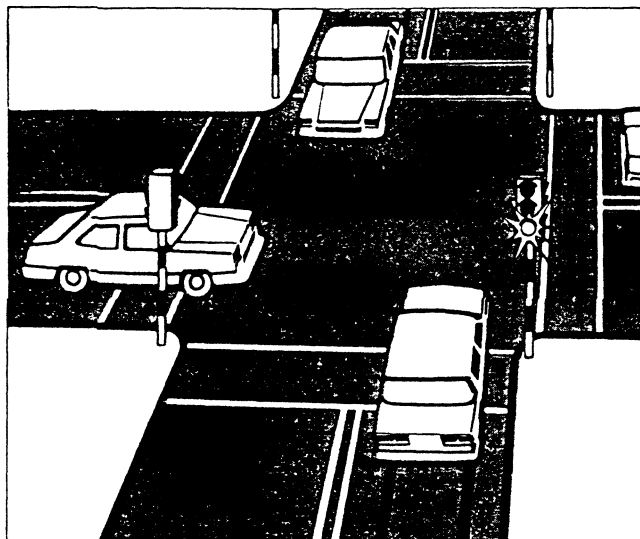


Slow Response to Traffic Signals

longer than normal response to a change in traffic signal. For example, the driver remains stopped at the intersection for an abnormally long period of time after the traffic signal has turned green.

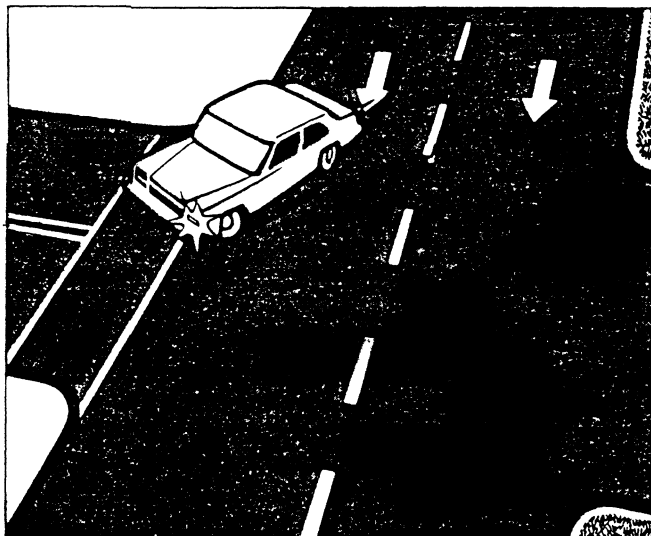
35% Stopping Inappropriately (Other Than in Traffic Lane)

The observed vehicle stops at an inappropriate location or under inappropriate conditions, other than in the traffic lane. Examples include stopping: in a prohibited zone; at a crosswalk; far short of an intersection; on a walkway; across lanes; for a green traffic signal; or for a flashing yellow traffic signal.



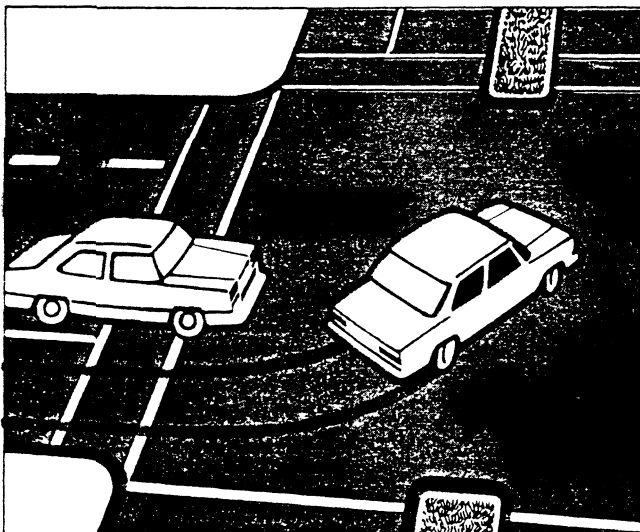
40% Signaling Inconsistent With Driving Actions

A number of possibilities exist for the driver's signaling to be inconsistent with the associated driving actions. This cue occurs when inconsistencies such as the following are observed: failing to signal a turn or lane change; signaling opposite to the turn or lane change executed; signaling constantly with no accompanying driving action; and driving with four-way hazard flashers on.



35% Turning Abruptly or Illegally

The driver executes any turn that is abnormally abrupt or illegal. Specific examples include: turning with excessive speed; turning sharply from the wrong lane; making a U illegally; turning from outside a designated turn lane.



30% Accelerating or Decelerating Rapidly	This cue encompasses any acceleration or deceleration that is significantly more rapid than that required by the traffic conditions. Rapid acceleration might be accompanied by breaking traction; rapid deceleration might be accompanied by an abrupt stop. Also a vehicle might alternately accelerate and decelerate rapidly.
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30% Headlights Off	The observed vehicle is being driven with both headlights off during a period of the day when the use of headlights is required.
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